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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,729	11/24/2003	Gerard A. Rutigliano	893.0011USU	2758

7590 01/29/2007  
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EXAMINER
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COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1723

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/29/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/720,729

**Applicant(s)**

RUTIGLIANO ET AL.

**Examiner**

Charles E. Cooley

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-10 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6,8,9,13-15,17,19 and 20 is/are rejected.
- 7) ☒ Claim(s) 5,7,10,16 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **FINAL OFFICE ACTION**

### ***Claim Objections***

1. Claim 1, line 5: replace "to a said first handle" with --to said first handle--.

Appropriate correction is required.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

- a. Claims 1, 8, 13, and 17: the claimed relationship between the second or third handle and the drive shaft axis can be reasonably determined from the drawing figures but lacks positive antecedent basis in the specification.
- b. The subject matter of amended claim 20 can be reasonably determined from the drawing figures but lacks positive antecedent basis in the specification.

### ***Claim Rejections - 35 U.S.C. § 112, first paragraph***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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4. The specification is objected to under 35 U.S.C. § 112, first paragraph, as the specification, as originally filed, does not provide support for the invention as is now claimed.

Claim 19, as amended, recites subject matter not supported by the originally filed specification and not reasonably supported by the drawing Figures. Note the first handle 20 defines a major axis that is clearly angled at an acute angle with respect to an axis of the drive shaft (along 14). Figures 1 and 3 fail to depict any conceivable axis of the first handle 20 being "substantially perpendicular" to the axis of the drive shaft.. Claim 19, as amended, therefore involves new matter.

5. Claim 19 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 13, 14, 15, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Jackson (US 2,430,817).**

The patent to Jackson '817 discloses a device or blender comprising a body 1 housing a drive motor; a drive shaft 21 operatively connected to said drive motor; and a tool 19, 20 operatively connected to said drive shaft, wherein said body has a first handle 13, a second handle 7, and a third handle 14 being located in a position on said body 1 remote from said first handle 13 and said second handle 7 as seen in the Figures; wherein said first handle 13 is elongated with a end portions 12 and a central portion capable of being grasped by an operator's hand; wherein a major axis of said first handle 13 is at least substantially perpendicular to an axis defined by said drive shaft 21 as seen in Fig. 2.

**8. Claims 1, 3, 4, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by McCracken (US 6,168,507 B1).**

The patent to McCracken '507 discloses a device comprising an elongated body 16 housing a drive motor 24; a first handle 70a; a stabilizing second handle 68a having a first end and a second end, said first end being attached to a said first handle 70a, said second end being attached to an upper half of said body (Figs. 1-2); a drive shaft 184 operatively connected to said drive motor; a third handle 26, extending outward from a lower half of said body 16 in a direction substantially perpendicular to an axis defined by said drive shaft as seen in Figs. 1-4 and 11; and a tool 46 operatively connected to said drive shaft 184; wherein said first handle 70a is elongated with end portions and a central portion and a distal end portion capable of being grasped by an operator's hand.

**9. Claims 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by McCracken (US 6,168,507 B1).**

The patent to McCracken '507 discloses a device comprising an elongated body 16 housing a drive motor 24; a drive shaft 184 operatively connected to said drive motor; and a tool 46 operatively connected to said drive shaft, wherein said body has a first handle 68a attached to an upper half of the body 16 and a second stabilizing handle 26 attached to a lower half of the body 16 on a front side of the body 16, the second handle 26 extending outwardly from the body 16 in a direction substantially perpendicular to an axis defined by said drive shaft 184 as seen in Figs. 1-4 and 11.

**10. Claims 13, 14, 15, 17, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by McCracken (US 6,168,507 B1).**

The patent to McCracken '507 discloses a device comprising a body 16 housing a drive motor 24; a drive shaft 184 operatively connected to said drive motor; and a tool 46 operatively connected to said drive shaft, wherein said body has a first handle 70a, a second handle 68a, and a third handle 26 being located in a position on said body 16 remote from said first handle 70a and said second handle 68a as seen in Figures 1-4; wherein said first handle 70a is elongated with a end portions and a central portion capable of being grasped by an operator's hand; wherein a major axis of said first handle 70a is at least substantially perpendicular to an axis defined by said drive shaft 184 as seen in Figs. 1-4 and 11; wherein said third handle 26 protrudes outwardly from a side of said body 16 in a direction substantially perpendicular to an axis defined by

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said drive shaft as seen in Figs. 1-4 and 11; wherein a major axis of said second handle 68a forms an acute angle with an axis defined by said drive shaft 184 as seen in Figs. 1-4 and 11.

***Allowable Subject Matter***

11. Claims 5, 7, 10, 16, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Amendment***

12. Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection necessitated by the extensive revisions to the claims.

With regard to the prior art, the intended use language of the claims (blender) and the manner in which the blender is manipulated by a user has not been afforded any patentable weight because it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647; *In re Sebald*, 122 USPQ 527; *In re Lemin et al.*, 140 USPQ 273; *In re Sinex*, 135 USPQ 302; *In re Pearson*, 181 USPQ 641.

Exemplary claim language such as "wherein said second handle can be handled by the operator to stabilize the immersion blender during operation" (claim 6) is merely a statement of intended use which imparts no structure to the claimed apparatus. It is well settled that the intended use of an apparatus is not germane to its patentability. *In re Self*, 671 F.2d 1344, 213 USPQ 1 (CCPA 1982); *In re Yanush*, 477 F.2d 958, 177 USPQ 705 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967). Furthermore, there is no reason to believe that the multiple handles of the prior art devices blenders cannot be manipulated in the claimed manners.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. The examiner's supervisor, Wanda Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Charles", followed by a stylized flourish or second name.

Charles E. Cooley  
Primary Examiner  
Art Unit 1723

23 January 2007